

Before the
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)

)
Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations,
(Monticello, Arkansas, and
Bastrop, Louisiana)

) MM Docket no. 99-141
) RM-9339
)
)
)

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

RECEIVED
JUL 6 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS ON NOTICE OF PROPOSED
RULE MAKING AND ORDER TO SHOW CAUSE**

Community Radio Network, Inc. ("Community"), licensee of KHBM-FM, Channel 229C3, Monticello, Arkansas, by its attorneys and pursuant to Section 1.415 and 1.420 of the Commission's Rules, hereby files these Reply Comments with respect to the Commission's *Notice of Proposed Rule Making*, DA 99-820, released April 30, 1999 ("NPRM") in the above-captioned docketed rule making proceeding. On June 21, 1999, Community timely filed Comments supporting the upgrade of KHBM-FM, Monticello, Arkansas, to operate on Channel 229C2. No other comments were filed; however, in light of the Commission's *Order to Show Cause* incorporated in the *NPRM*, it is necessary for Community to file this pleading.

The License of KTRY-FM Must be Modified to Operate on Channel 230A

Community acquired KBHM-FM June 1, 1999, from the former licensee, Midway Broadcasting Company ("Midway") through consummation of File No. BALH-990329GK. Midway initiated this rule making proceeding by filing a Petition for Rule Making requesting the substitution of Channel 229C2 for Channel 229C3 at Monticello, Arkansas, and the concurrent

No. of Copies rec'd 014
List A B C D E

modification of the license of KHBM-FM to operate on Channel 229C2. In order to accommodate KHBM-FM on Channel 229C2, Midway requested the substitution of Channel 230A for vacant Channel 230C3 at Bastrop, Louisiana, as well as the modification of license of Station KTRY-FM currently operating on Channel 232A at Bastrop, to specify operation on Channel 230A at Bastrop. KRTY-FM is licensed to Jamie Patrick Broadcasting, Ltd. ("Patrick"). As an option, Midway suggested the placement of a site restriction on vacant Channel 230C3 at Bastrop would enable Midway to upgrade KHBM-FM at Monticello while preserving the Channel 230C3 allotment at Bastrop. Midway explained that it is precluded from upgrading by filing a one-step application because of the existence of Channel 230C3 at Bastrop. As a result of Midway's petition, the Commission issued its *NPRM* proposing two options:

<u>City</u>	<u>Option I</u>	
	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Monticello, Arkansas	228A*, 260C3	229C2, 260C3
Bastrop, Louisiana	230C3, 232A 247A, 261C2	230A, 247A, 261C2
 <u>Option II</u>		
Monticello, Arkansas	228A*, 260C3	229C2, 260C3
Bastrop, Louisiana	230C3, 232A 247A, 261C2	230C3 ¹ , 247A, 261C2

The Commission proposes, in any event, to remove Channel 232A from Bastrop.

The Show Cause Order

In the *NPRM*(¶5-6) the Commission noted that Station KTRY-FM previously requested

*KHBM-FM is currently licensed for operation on Channel 229C3.

¹ This option contemplates a change in the reference coordinates only for the existing Channel 230C3 at Bastrop to NL 32° 43' 25", WL 91° 56' 56" 7.1 km south of Bastrop.

and was granted a modification to Channel 230C3, and directed an *Order to Show Cause* to Patrick to “choose unequivocally now which option it will pursue in response to this Order to Show Cause. Failure to respond will result in a downgrade of the current vacant allotment of Channel 230C3 to Channel 230A at Bastrop to coincide with Station KTRY-FM’s current operating facilities, and Station KTRY-FM’s license will be modified accordingly.”

Patrick was ordered to show cause, not later than June 21, 1999, by filing a written statement showing with particularity why its license should not be modified to specify operation on Channel 230A at Bastrop. A review of undersigned counsel’s records and the Commission’s Electronic Comment Filing System reveals that Patrick filed no pleading in this proceeding responsive to the Commission’s *Order to Show Cause*. As Patrick failed to respond, Patrick’s license for KTRY-FM must be modified for operation on Channel 230A.

Reimbursement Issue

At *NPRM* ¶5, the Commission solicited comment on whether Community should be required to reimburse Patrick under *Lonoke, Arkansas, and Clarksdale, Mississippi*, 6 FCC Rcd 4861(1991) if Patrick should elect to change to Channel 230A at its site. As Patrick has by default, elected to change to Channel 230A at its site, Community states that should the Commission determine that Community should reimburse Patrick for changing its operating channel to 230A at its existing site, Community will reimburse Patrick under the guidelines set out in *Circleville, Ohio*, 8 FCC 2d 159 (1968). However, Community is unwilling to reimburse

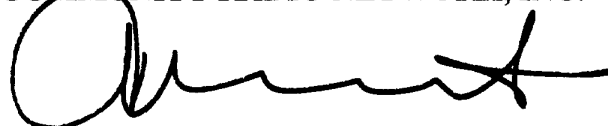
Patrick for relocating to a site that clears KHBM-FM on Channel 230C3,² because Community should not be obligated to compensate Patrick for a significant improvement in its facilities. Community should only be responsible for maintaining the *status quo* for KTRY-FM; i.e., to relocate from Channel 232A to Channel 230A.

Community restates its intention to file an application for minor change construction permit to operate on Channel 229C2 at Monticello, and upon grant thereof, to construct and operate the improved facilities for KHBM-FM on Channel 229C2.

Wherefore, Community respectfully requests the Commission to amend its Table of Allotments to assign Channel 230A to Bastrop, Louisiana; to modify the license of KTRY-FM to operate thereon; to assign Channel 229C2 to Monticello, Arkansas; and to modify the license of KHBM-FM to operate on Channel 229C2 at Monticello.

Respectfully submitted,

COMMUNITY RADIO NETWORK, INC.



By: _____

Gary S. Smithwick
Its Counsel

Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, D.C. 20036
(202) 785-2800

July 6, 1999

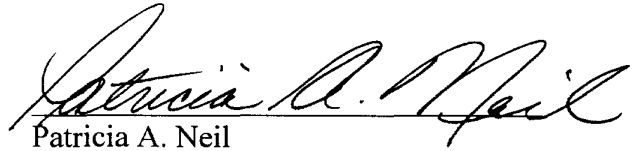
² Patrick filed an application (File No. BPH-990514IE) for construction permit to change frequency and class proposing to operate KTRY-FM with Class C3 facilities at geographical coordinates North Latitude 32° 49' 06", and West Longitude 91° 54' 29", the present site of KTRY-FM. The application shortspaces the reference coordinates for Channel 229C2 at Monticello, Arkansas, and thus is in conflict with Community's proposal to upgrade KHBM-FM. On June 21, 1999, Community filed an informal objection to the application pointing out the deficiencies therein.

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on this 6th day of July, 1999, a copies of the foregoing were sent via First Class Mail, postage pre-paid, to the following:

Ms. Nancy Joyner*
Federal Communications Commission
The Portals II
445 Twelfth Street, S.W.
Room 3-A267
Washington, D.C. 20554

Mr. Henry Cotton, President
Jamie Patrick Broadcasting, Ltd.
Radio Station KTRY-FM
328 West Madison Ave.
Bastrop, LA 71220



Patricia A. Neil

*by hand